IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/10/2003

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THE HONOURABLE MR. JUSTICE P.K.MISRA

WRIT PETITION NO.585 of 2003 AND WRIT PETITION NO. 586 of 2003

S.Chinnusamy .. Petitioner in WP 585/2003
A.Ramasamy .. Petitioner in WP 586/2003

-Vs-

1.The Deputy Registrar of Co-op.
Societies, (Housing) Junction
Main Road, Salem.

2.AA-340, Bhavani Co-op. Housing
Societies, rep., by its Special
Officer, Bhavani, Erode District.

3.The District Employment Officer,
Office of the District Employment,
Erode-1.

4.Velumani

5.Vijaya .. Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India
praying for the issue of Writs of Mandamus, directing the first
respondent to initiate necessary proceedings against 2nd respondent for the
illegal appointments made by him to the respondents 4 and 5.

!For Petitioner in both WPs : Mr.C.Prakasam

^For Respondents-1&3
in both WPs : Mrs.Thenmozhi Shivaperumal

For Respondent-2 in both
WPs -- Mr.Muralidharan

For Respondents-4&5
in both WPs -- Mr.S.Umapathy

:O R D E R

Heard the learned counsels appearing for the parties.

2. The petitioners have filed these writ petitions praying for a direction to the respondents 2 and 3 to cancel the appointment of respondents 4 and 5 and to give further direction to consider the case of the petitioners for appointment.

3. It appears that respondent No.2 had called for the names from the District Employment Officer for appointment to the posts under the second respondent. Certain names were sponsored for t

rs were sponsored by the Employment Exchange in a supplementary list and the Employment Exchange-respondent No.3 intimated respondent No.2. However, the communication was received by respondent No.3 from respondent No.2 to the effect that the interview was already over and the candidates have already been selected.

4. Counter-affidavits were filed on behalf of respondent Nos.4 and 5, who are the beneficiary of the impugned respondent No.2, which has selected the candidates.

5. Even though, counter-affidavit has not been filed on behalf of the respondent No.3, the relevant file has been produced. The counsel for respondent No.3 has indicated that subsequently respondent No.3 had written to respondent No.2 to hold a fresh selection process as only one candidate had attended the interview for one po candidates in the supplementary list had not been called for the interview.

6. As per Rule 149 (2) of Tamil Nadu Co-operative Societies Rules 1988, no appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment Exchange and also giving due publicity by means of announcement in the notice board of the Society and also of the

7. It is of course true that in the present case, names have been called for from the Employment Exchange. Surprisingly, only one candidate has attended each interview and has been selected. It is stated that the call letter had been issued to the other candidates under Certificate of Posting. At any rate, the supplementary list had been sponsored by the Employment Exchange and no call letter issued to such persons and they have received the intimation from the Employment Exchange only after the interview was over.

8. Learned counsel appearing for the petitioner has placed

reliance upon G.O.Ms.No.99 dated 30.7.1981 and G.O.Ms.No.21 dated 23.8.1983 and contended that notice should have been sent by Registered Post. He has also placed reliance upon the guidelines to the appointing authority. Clause No.30 of the guidelines says that all the candidates in the list should be called for interview by registered post providing sufficient time for receipt of interview letter by candidates and copy of the interview letter may be marked to the Office. Counsel appearing for the petitioner has also placed reliance upon the Government Order which indicates that persons who are likely to attain the age of 35 may be given preference.

9. There has been a violation of all these instructions in the present case. The fact that only one candidate had attended the said interview itself creates sufficient suspicion about the method of selection. The fact that the Employment Exchange had subsequently called upon the Special Officer to make a fresh selection itself is indicative of the fact that even the Employment Exchange was not satisfied with the selection which had not been done in a proper manner.

10. In the representation filed by the petitioner, he indicated that the two persons selected were related to the employees of nearby Co-operative Society which was under the jurisdiction of the Special Officer. However, since this aspect has not been specifically indicated in the affidavit, the respondent Nos.4 and 5 did not have any opportunity of filing counter on this aspect and therefore is not considered as a relevant aspect by me. Be that as it may, the other circumstances namely, only one candidate attending the interview and the Special Officer not postponing the selection, even though a supplementary list of candidates were there and the instruction issued by the Government regarding sending call letters by registered post and giving preference to persons likely to attain the age of 35 have not been followed, I am forced to quash the appointment of respondent Nos.4 and 5 .

11. I direct that the further interviews shall be held for the post within a period of two months from the date of receipt of a copy of the order. The petitioners as well as the respondent earlier occasion should be called for the interview and the selection should take place afresh in accordance with law and in accordance with various Government instructions issued from time to time. The fact that respondent Nos.4 and 5 have acquired some exper of the impugned selection process cannot be considered as a merit for them and their case for appointment has to be considere that of others without taking into account such so called experience. However, since the respondent Nos.4 and 5 have worked salary, there is no question of any refund of their salary.

12. The petitioner in W.P.No.586 of 2003 has passed the age of 35 in the meantime. Since he was eligible at the time, when the initial selection had taken place, he shall also be allowed to in the interview and his case shall be considered notwithstanding the

fact that he has crossed the age of 35 in the meantime.

13. The writ petitions are accordingly allowed to the extent indicated. No costs.

Index : Yes. 13-10-2003
Internet: Yes.
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To
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